

REMARKSStatus of the Claims

In the Official Action mailed January 25, 2007, claims 58, 61-83, 85-87 and 97-103 are pending. Claims 58, 61-83, 85-87 and 97-103 were rejected. The rejection is respectfully traversed. Claims 58, 63, 66-70, 72-75, 77, 78-82, 85-86, 97-99, 100 and 102-103 have been amended. Claims 61-62, 64-65, 84, and 87 have been cancelled without prejudice or disclaimer. Applicants have thoroughly reviewed the outstanding Official Action including the Examiner's remarks and the references cited therein. No new matter has been added.

The following remarks are believed to be fully responsive to the Official Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

Claim Rejections — 35 U.S.C. § 102(b)

Claims 86, 87 and 97 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,106,742 to *Schultz, et al.* (hereinafter "*Schultz*"). Applicant initially notes that claim 87 has been cancelled. For anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present. M.P.E.P. § 706.02.

Schultz does not teach or suggest at least "a screw portion adapted to screw fasten the applicator to the neck of the receptacle," as recited in claim 86. Rather, *Schultz* is directed to snap fastening, contrary to what the Examiner alleges. In particular, *Schultz* states that rings 49 and 51 are "designed to have an interference fit with and to snap over the retaining rings 23 and 25. . . ." (Col. 2, ll. 35-47). Such

snap fitting provides a gap for the actuator assembly 27 to slide on the head 17 between two positions to dispense the product. (*Id.*) Further, *Schultz* also states that the locking rings 49 and 59 "are designed to have a snug sliding fit" (*Id.*) Therefore, *Schultz* actually teaches away from screw fastening because screw fastening would not provide the ability to slide the actuator assembly.

Since each and every element, as set forth in the claim, is not found therein, either expressly or inherently described as required by the M.P.E.P., *Shultz* cannot be said to anticipate "a screw portion adapted to screw fasten the applicator to the neck of the receptacle," as recited in claim 86. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 97 depends from independent claim 86. Because claim 86 is believed to be in condition for allowance, claim 97 is also believed to be in condition for allowance, at least by reason of its dependency from claim 86. Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejections — 35 U.S.C. § 103(a)

Claims 58, 62, 63, 76-83, 85, 98, 99 and 101-103

Claims 58, 62, 63, 76-83, 85, 98, 99 and 101-103 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,121,906 to *Hulsh* (hereinafter "*Hulsh*") in view of U.S. Patent No. 6,270,277 to *Ogino, et al.* (hereinafter "*Ogino*"). This rejection is respectfully traversed.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable

expectation of success. Finally, the prior art must teach all the claim limitations. M.P.E.P. § 2142. In light of the following arguments, the combined references do not teach or suggest all of the claim limitations of the present invention. Applicants respectfully point to the final prong of the test which states that the prior art must teach all of the claim limitations. At the very least, the combined references do not teach or suggest all of the limitations of these claims, as stated below.

Hulsh is directed to a squeezable tube adapted to perform as an applicator. Nowhere does *Hulsh* teach or suggest, "a row of teeth," as recited in claim 58. Similarly, *Ogino* is also directed to a container adapted to perform as an applicator. *Ogino's* applicator contains holes for dispensing its contents and a plurality of filament portions for dispersing the contents once dispensed. *Hulsh* and *Ogino* do not teach or suggest at least "a row of teeth," as recited in claim 58.

Claim 61

Claim 61 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Ogino* as applied to claim 58 above, and further in view of *Schultz*. Claim 61 has been cancelled, rendering this rejection moot. As elements of claim 61 have been incorporated into claim 58, the rejection of claim 61 will be addressed as if applied to claim 58.

As stated previously, *Hulsh* and *Ogino* do not teach or suggest at least "a row of teeth," as recited in claim 58.

Although *Schultz* discloses a container having an applicator with passages, *Schultz* does not teach or suggest "a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58. *Schultz* discloses a container having a neck with a first portion, having a first diameter, and a second portion,

below the first portion, having a second diameter; the second diameter is larger than the first. The applicator of *Schultz* is snap fitted, as mentioned previously, onto the first portion. Nowhere does *Schultz* mention or disclose "a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58.

Accordingly, neither *Hulsh*, *Ogino*, nor *Schultz*, alone or in combination, teach or suggest at least "a row of teeth extending from a first tooth to a last tooth, a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58. Claims 63, 76, 77-83, 85, 98, 99 and 101-103 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 63, 76, 77-83, 85, 98, 99 and 101-103 are also believed to be in condition for allowance, at least by reason of this dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 64-68, 70-72, 74 and 75

Claims 64-68, 70-72, 74 and 75 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Ogino* as applied to claim 58 above, and further in view of U.S. Patent No. 6,457,476 to *Elmer et al.* Applicant initially notes that claim 64 has been cancelled. As elements of this claim have been incorporated into claim 58, the rejection of claim 64 will be addressed as if applied to claim 58.

As previously discussed, *Hulsh* and *Ogino* do not teach or suggest "a row of teeth extending from a first tooth to a last tooth, a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58.

Elmer does not overcome this deficiency. *Elmer* is directed to an applicator assembly for applying product to the

hair through the use of tines having orifices. The tines extend from a base that is coupled to an applicator housing. However, nowhere does *Elmer* teach or suggest "a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58.

Claims 65-68, 70-72, 74 and 75 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 65-68, 70-72, 74 and 75 are also believed to be in condition for allowance, at least by reason of this dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 73

Claim 73 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Ogino* in view of U.S. Patent No. 2,270,529 to *Kirschenbaum*. As previously discussed, *Hulsh* and *Ogino* do not teach or suggest "a row of teeth extending from a first tooth to a last tooth, a distance between said first and said last teeth being greater than a diameter of said first portion of said neck," as recited in claim 58. Therefore, *Hulsh* and *Ogino* also do not teach or suggest "a groove extending from a free end of said at least one of said teeth to said dispenser orifice," as recited in claim 73, which depends from claim 58.

Kirschenbaum does not supply these missing teachings. Rather, *Kirschenbaum* discloses a recessed portion 79 running along the teeth from ends opposite the free ends of the teeth to "a point spaced from the free ends thereof." (P.3 11.20-31 (emphasis supplied).) Groove 80 is provided in the recessed portion. Therefore, groove 80 also runs to a point spaced from the free ends of the teeth. Thus, *Kirschenbaum's* groove does not run near the free ends of the teeth; it stops short of them. Therefore, *Kirschenbaum* does not teach or suggest "a groove extending from a free end of said at least one of said teeth to

said dispenser orifice," as recited in claim 73. Accordingly, withdrawal of the rejection of claim 73 is respectfully requested.

CONCLUSION

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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